

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
Southern Division
Case No: 7:16-cv-86**

WFC Management Corp., d/b/a ISO Aero)	
Service; and Gerard and Ann Tremblay;)	
)	
Plaintiffs,)	
)	
v.)	
)	
NEW HANOVER COUNTY AIRPORT)	
AUTHORITY in their official capacity; JULIE)	
WILSEY, individually and in her official capacity)	
as Airport Director; and GARY W.)	
BROUGHTON, individually and in his official)	
capacity as Airport Deputy Director,)	
)	
Defendants.)	

DEFENDANTS' MOTION TO DISMISS

Defendants New Hanover County Airport Authority in their official capacity, Julie Wilsey, individually and in her official capacity as Airport Director, and Gary W. Broughton, individually and in his official capacity as Airport Deputy Director (collectively, the "Defendants"), through the undersigned counsel, move pursuant to Fed. R. Civ. P. Rule 12(b)(6) to dismiss all claims against them on the grounds that Plaintiffs' Complaint fails to state a claim upon which relief can be granted because (i) Plaintiffs lack standing to pursue a 42 U.S.C. § 1983 claim on behalf of ISO Aero Service, Inc. and its owner, Ken Vojta as third parties, and the Tremblays lack standing to sue for harm suffered by WFC; (ii) the majority of the alleged disparate treatment and alleged misconduct of the Defendants occurred prior to April 26, 2013; therefore, such conduct is barred by the 3 year applicable statute of limitations pursuant to N.C. Gen. Stat. § 1-52 and any remaining allegations of misconduct occurring thereafter is not constitutionally protected; (iii) Plaintiffs' Complaint fails to plead facts demonstrating the lack of rational bases for Defendants' alleged misconduct with sufficient particularity; (iv) Julie Wilsey and Gary W. Broughton, in their individual capacities, are

entitled to qualified immunity because their alleged conduct does not violate clearly established statutory or constitutional rights; (v) Julie Wilsey and Gary W. Broughton are entitled to a dismissal in their official capacities because Plaintiffs' claim against Ms. Wilsey and Mr. Broughton is duplicative of Plaintiffs' 42 U.S.C. § 1983 against the New Hanover County Airport Authority; (vi) Plaintiffs' Complaint fails to allege sufficient facts to demonstrate disparate treatment in violation of the equal protection clause of the Fourteenth Amendment to the United States Constitution; (vii) Plaintiffs are not entitled to punitive damages against the New Hanover County Airport Authority as a municipality; and (viii) Plaintiffs' request for injunctive relief is moot since Plaintiffs' 42 U.S.C. § 1983 claim fails to state a claim. Included with the Motion and incorporated herein by reference are true and accurate copies of documents referenced by the Plaintiffs in the Complaint, including the FAA Opinion Response attached hereto as Exhibit A; WFC's RFP (as redacted) attached hereto as Exhibit B; Broughton's Letter to WFC attached hereto as Exhibit C; WFC's Response attached hereto as Exhibit D; 2014 Termination Letter attached hereto as Exhibit E; and the May 20, 2014 Letter attached hereto as Exhibit F. Pursuant to Fed. R. Civ. P. Rule 12(a)(4), the Defendants reserve all of their answers, defenses and other responsive pleadings to Plaintiffs' Complaint. Defendants contemporaneously file their Memorandum in Support of their Motion to Dismiss.

Respectfully submitted this the 27th day of June, 2016.

BY: /s/ Kelly Colquette Hanley
Kelly Colquette Hanley
N.C. State Bar No. 25130
Edward S. Schenk III
N.C. State Bar No. 32917
Williams Mullen
301 Fayetteville St., Suite 1700
Raleigh, NC 27601
Telephone: (919) 981-4000
Facsimile: (919) 981-4300
Email: khanley@williamsmullen.com;
eschenk@williamsmullen.com
Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on June 27, 2016, I electronically filed the foregoing DEFENDANTS' MOTION TO DISMISS with the Clerk of the Court using the CM/ECF, which will send notice to the following:

Randolph M. James, Esq.
P.O. Box 20060
Winston-Salem, NC 27120
Counsel for Plaintiffs

BY: /s/ Kelly Colquette Hanley
Kelly Colquette Hanley
N.C. State Bar No. 25130
Williams Mullen
301 Fayetteville St., Suite 1700
Raleigh, NC 27601
Telephone: (919) 981-4000
Facsimile: (919) 981-4300
Email: khanley@williamsmullen.com;
Attorneys for Defendants